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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,995	08/01/2001	Hdei Nunoe	2000.023	5812
30636 7590 07/13/2007 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			EXAMINER ANYA, CHARLES E	
			ART UNIT	PAPER NUMBER
			2194	
			MAIL DATE	DELIVERY MODE
			07/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/920,995

Applicant(s)

NUNOE, HDEI

Examiner

Charles E. Anya

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

WILLIAM THOMSON  
SENIOR PATENT EXAMINER

### **DETAILED ACTION**

1. Claims 1-7 are pending in this application.
2. In view of the Appeal Brief filed on 3/23/07, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**3. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,308,255 B1 to Gorishek, IV et al.**

4. As to claim 1, Gorishek teaches a method, comprising: determining a current processing mode of an executing software function (Steps 102/106 Col. 13 Ln. 55 – 65); when the current processing mode is a privileged processing mode, executing a direct program flow control instruction to directly access an instruction within software having the privileged processing mode (“...direct operating system calls...” Col. 12 Ln. 60 – 67, Step 104 Col. Col. 13 Ln. 55 – 65) and when the current processing mode is an unprivileged processing mode, executing an indirect program flow control instruction to cause execution of the instruction within software having the privileged processing mode (“...thunk...” Col. 12 Ln. 42 – 67, Step 108 Col. 13 Ln. 65 – 67, Col. 14 Ln. 1 – 2).

5. As to claim 2, Gorishek teaches the method of claim 1, wherein the direct program flow control instruction is a jump instruction (Step 104 Col. Col. 13 Ln. 55 – 65).

6. As to claim 3, Gorishek teaches the method of claim 1, wherein the indirect program flow control instruction is an interrupt instruction (Col. 12 Ln. 42 – 67, Step 108 Col. 13 Ln. 65 – 67, Col. 14 Ln. 1 – 2).

Art Unit: 2194

7. As to claim 4, Gorishek teaches the method of claim 1, wherein the software having the privileged processing mode is operating system software (Col.12 Ln. 30 – 41).

8. As to claim 5, Gorishek teaches the method of claim 4, wherein the software having the privileged processing mode is kernel software (Col.12 Ln. 30 – 41).

9. As to claim 6, Gorishek teaches a method, comprising: identifying a program code segment implementing an access to a memory area to be executed within a privileged processing mode; replacing the program code segment with a substitute code segment; wherein the substitute code segment includes program code to identify a current processing mode of the program code segment (“...thunk... indirect operating system calls...” Col. 12 Ln. 42 – 67, “...emulation coprocessor interface code...” Col. 14 Ln. 1 – 2), execute a direct program flow control instruction if the current processing mode is the privileged processing mode (“...direct operating system calls...” Col. 12 Ln. 60 – 67, Step 104 Col. Col. 13 Ln. 55 – 65), and execute an indirect program flow control instruction if the current processing mode is an unprivileged processing mode (“...thunk... indirect operating system calls...” Col. 12 Ln. 42 – 67, Step 108 Col. 13 Ln. 65 – 67, Col. 14 Ln. 1 – 2).

10. As to claim 7, Gorishek teaches computer readable medium encoded with a software application, comprising: a software code implementing application functionality

(Host Process 80/Foreign Application 82); and a smart system call into an operating system (operating system calls..." Col. 12 Ln. 42 – 67); wherein the smart system call comprises the software code to identify a current processing mode of a program code segment, execute a direct program flow control instruction if the current processing mode is a privileged processing mode ("...direct operating system calls..." Col. 12 Ln. 42 – 67), and execute an indirect program flow control instruction if the current processing mode is an unprivileged processing mode ("...indirect operating system calls..." Col. 12 Ln. 42 – 67).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Anya whose telephone number is (571) 272-3757. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles E Anya  
Examiner  
Art Unit 2194

cea.

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER